IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BERNARD MACHOVEC	:	
v.	:	Civil No. CCB-03-1920
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA	:	

MEMORANDUM

Now pending before the court are cross-motions by the plaintiff and the defendant for summary judgment. The issues in these motions have been fully briefed and no hearing is necessary. See Local Rule 105.6. For the reasons stated below, the defendant's motion will be granted and the plaintiff's motion will be denied.

BACKGROUND

The plaintiff, Bernard Machovec ("Machovec"), worked full-time as a fiber optics assembler for Corvis Corporation ("Corvis"). Machovec took a leave of absence from his job with Corvis starting on June 6, 2001. He was terminated on October 22, 2001, based on his exhaustion of all leave entitlements and his failure to communicate with Corvis in over a month.[1] (R. at 54-55.) Machovec states that he did not work or attend school from June 6, 2001 until October 15, 2002, when he began attending TESST College in Baltimore. (Pl.'s Mem. at Ex. 1, Machovec Aff., at ¶ 1-2.)

Corvis offered short-term and long-term disability benefits to its full-time employees under a

[1] Corvis designated this absence as leave under the Family and Medical Leave Act, which was exhausted as of October 12, 2001. (R. at 54.)

group insurance policy issued and administered by the defendant, Prudential Insurance Company of America ("Prudential"). The short-term disability plan provides a weekly benefit of up to $50 for thirteen weeks, beginning after an initial "elimination period" of 7 days. (R. at 102.) The long-term disability plan provides a monthly benefit of up to 60 percent of an employee's monthly earnings for up to 60 months, beginning after an initial "elimination period" of 90 days. (Id. at 103.) Under the provisions of both plans, an employee is disabled "when Prudential determines that [he is] unable to perform each and every of the material and substantial duties of [his] regular occupation due to [his] sickness or injury."[2] (Id. at 112, 122.) The short-term disability plan excludes coverage for "occupational sickness or injury."[3] (Id. at 116.) A claimant is required to submit proof of his claim which "must show," among other things, appropriate documentation of the disabling disorder and the extent of the disability, including restrictions and limitations preventing the claimant from performing his regular occupation. (Id. at 118, 134.)

The administrative record contains medical records from two treating physicians: Dr. Chris deBorja, a general physician who treated Machovec from June 1 through August 30, 2001, and Dr. Harjit Bajaj, who saw Machovec on two occasions in October 2001. During the period between June 1 and August 30, Machovec saw Dr. deBorja almost once a week. (Id. at 29-44.) Machovec variously complained of stress, anxiety, irritable bowel syndrome (IBS), insomnia, depression,

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[2] "Material and substantial duties" is defined to include duties that "are normally required for the performance of your regular occupation" and "cannot reasonably be omitted or modified." (R. at 112-13, 122.)

[3] "Occupational sickness or injury" is defined as "an injury arising out of, or in the course of, any work for wage or profit regardless of employer, or a sickness covered, with respect to such work, by any workers' compensation law, occupational disease law or similar law." (R. at 116.)

sensations in his leg, and occasionally of headaches, blurred vision, dizziness, and trembling in his hand. (Id.) Dr. deBorja treated Machovec with various prescribed medications, adjusted over time. (Id.) Dr. deBorja also excused Machovec from work for June 6 through September 13, typically for one- or two-week periods at a time, without providing any specific explanations as to why Machovec was unable to work. (Id. at 29, 31-32, 34, 38-39, 42-43.) The records from Dr. deBorja provide no further details regarding Machovec's diagnosis, symptoms, or any limitations that prevented him from performing the normal duties of his job.

Machovec also was referred to Dr. Bajaj, who performed an MRI (magnetic resonance imaging) on October 8 and an EEG (electroencephalogram) on October 17, two tests that detect and record brain activity and functioning. Machovec's results were normal, demonstrating no neurological impairment. (Id. at 47-49.)

Machovec submitted a claim to Prudential for short-term disability benefits dated July 16, 2001, which stated that his disability started on June 6 and that he expected to return to work on July 24. (Id. at 61.) Forms submitted by Machovec and Dr. deBorja at this time described the nature of Machovec's illness as including depression, anxiety, stress, nausea, dizziness, high blood pressure, and headaches. (Id. at 61-62.) In a space asking Dr. deBorja to explain how the patient's symptoms impact job performance he simply wrote "unable to perform." (Id. at 62.) Dr. deBorja's statement also indicated that the sickness occurred on the job, and that Machovec had made significant progress and could return to full duties on July 16. (Id. at 63.) According to Prudential's telephone records, on July 27, 2001 Machovec spoke with Ann Crucilla, a disability claim manager for Prudential, and confirmed that his sickness was job-related and due to stress at work. (Id. at 12.) Prudential then

denied Machovec's claim for short-term disability benefits, citing the exclusion in the policy for "occupational sickness or injury" and Machovec's statement that his sickness was work-related. (Id. at 86-89.)

Machovec then applied for worker's compensation benefits. On March 4, 2002, the Maryland Workers' Compensation Commission denied his claim. (Id. at 56.) Counsel for Machovec then submitted a request for reconsideration of the previous denial of benefits to Prudential, dated April 16, 2002, which was denied by Prudential on November 8, 2002. (Id. at 23, 74-76.) Prudential stated that the medical documentation provided did not disclose any medically-determinable, significant functional impairments that would prevent Machovec from working. (Id. at 76.) Machovec appealed again on November 14, and Prudential denied this appeal on December 18, again concluding that "the medical information on file does not support an impairment from his regular occupation"and "does not detail a severity of symptoms that would prevent Mr. Machovec from working." (Id. at 19, 67-69.)

Machovec also appealed this decision in a request dated January 7, 2003. (Id. at 17.) Prudential did not respond to this request prior to July 2, 2003, when Machovec brought this lawsuit claiming wrongful denial of benefits in violation of the Employment Retirement and Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B).[4]

ANALYSIS

[4] The plaintiff apparently seeks both short-term and long-term disability benefits, to cover the period from June 6, 2001 through October 15, 2002. (Pl.'s Mem. at 2 & n.1.) Prudential objects, pointing to its phone logs which show that Machovec's counsel informed Prudential in October 2002 that Machovec was only requesting benefits for the period through September 1, 2001. (R. at 14.) I do not need to resolve this dispute, because it is not relevant to the disposition of the parties' motions.

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment

> shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" Bouchat v. Baltimore Ravens Football Club, Inc., 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court must "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 644-45 (4th Cir. 2002), but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." Bouchat, 346 F.3d at 526 (internal quotation marks omitted) (quoting Drewitt v. Pratt, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)).

I.

In reviewing a claim under 29 U.S.C. § 1132(a)(1)(B) asserting wrongful denial of benefits, the court must engage in a two-part inquiry. First, the court must decide, as a matter of de novo contract interpretation, whether the ERISA plan at issue vested discretion in the plan administrator with respect

to the contested benefits. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); Booth v. Wal- Mart Stores, Inc. Assocs. Health & Welfare Plan, 201 F.3d 335, 340-41 (4th Cir. 2000). Second, if the administrator's decision was discretionary, the court must determine whether the denial of benefits abused that discretion. Johannssen v. Dist. No. 1-Pacific Coast Dist., MEBA Pension Plan, 292 F.3d 159, 168 (4th Cir. 2002); Booth, 201 F.3d at 341-42. In this case, the administrator had discretion and the undisputed facts show that it did not abuse that discretion.

A.

For the abuse of discretion standard to apply, an ERISA plan must confer "discretionary authority to determine eligibility for benefits or to construe the terms of the plan" on the administrator. Brogan v. Holland, 105 F.3d 158, 161 (4th Cir. 1997) (quoting Firestone, 489 U.S. at 115). The focus of this first inquiry is on the written language of the ERISA plan. See Coleman v. Nationwide Life Ins. Co., 969 F.2d 54, 56 (4th Cir. 1992) ("While a court should be hesitant to depart from the written terms of a contract under any circumstances, it is particularly inappropriate in a case involving ERISA, which places great emphasis upon adherence to the written provisions in an employee benefit plan."). Prudential's disability benefits plans state that an employee is disabled "when Prudential determines that [he is] unable to perform each and every of the material and substantial duties of [his] regular occupation due [his] sickness or injury." (R. at 112, 122.) Machovec argues that this language is not sufficiently clear to confer Prudential with discretion to determine eligibility for benefits.

"The plan's intention to confer discretion on the plan administrator" must be clear. Gallagher v. Reliance Standard Life Ins. Co., 305 F.3d 264, 268 (4th Cir. 2002). A plan does not need to contain specific phrases or an explicit grant of discretionary authority, however, as long as "the terms of a plan

indicate a clear intention to delegate final authority to determine eligibility to the plan administrator." Feder v. Paul Revere Life Ins. Co., 228 F.3d 518, 522-23 (4th Cir. 2000). Other courts have held that when a plan states that an employee will be considered disabled only when an administrator "determines" that the employee meets certain criteria, this is sufficient to imply discretionary authority to determine benefits eligibility. See Clapp v. Citibank, N.A. Disability Plan (501), 262 F.3d 820, 823, 827 (8th Cir. 2001); Adams v. Prudential Life Ins. Co. of Am., 280 F. Supp. 2d 731, 735-36 (N.D. Ohio 2003); Chapman v. Prudential Life Ins. Co. of Am., 267 F. Supp. 2d 569, 577 (E.D. La. 2003); Larsen v. Prudential Ins. Co. of Am., 151 F. Supp. 2d 167, 171-72 (D. Conn. 2001); see also McGraw v. Prudential Ins. Co. of Am., 137 F.3d 1253, 1259 (10th Cir. 1998) (same, where plan provided that "to be considered 'needed,' a service or supply must be determined by Prudential to meet all of these tests. . ."). But see Deal v. Prudential Ins. Co. of Am., 222 F. Supp. 2d 1067, 1069-70 (N.D. Ill. 2002); Ehrman v. Henkel Corp. Long Term Disability Plan, 194 F. Supp. 2d 813, 817-18 (C.D. Ill. 2002). The only authority that either party cites on this point from within the Fourth Circuit, an unpublished decision from Judge James C. Turk of the Western District of Virginia, applied the abuse of discretion standard to language providing "Total Disability exists when [the Plan administrator] determines. . ." Rudolph v. Long Term Disability Plan, No. 01-845, slip op. at 3-4 (W.D. Va. Feb. 11, 2003). I agree with the cited authorities that the language in Prudential's disability benefits plans is sufficiently clear to confer discretionary authority over determinations of benefits eligibility. Accordingly, the abuse of discretion standard applies.

B.

An administrator's "discretionary decision will not be disturbed if reasonable, even if the court

itself would have reached a different conclusion." Smith v. Cont'l Cas. Co., 369 F.3d 412, 417 (4th Cir. 2004) (quoting Booth, 201 F.3d at 341). Prudential's denial of benefits will not be overturned if the decision "is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence." Id. (quoting Bernstein v. CapitalCare, Inc., 70 F.3d 783, 788 (4th Cir. 1995)). While Prudential's conflict of interest as the party that pays for any benefits under the policy "may operate to reduce the deference given to a discretionary decision," Booth, 105 F.3d at 343 n. 2, the deference is lessened only to the extent necessary "to determine whether [the decision] is consistent with an exercise of discretion by a fiduciary acting free of the interests that conflict with those of the beneficiaries." Smith, 369 F.3d at 418 (quoting Doe v. Group Hospitalization & Med. Servs., 3 F.3d 80, 87 (4th Cir.1993)). "[I]n no case does the court deviate from the abuse of discretion standard." Id. (quoting Ellis v. Metro. Life Ins. Co., 126 F.3d 228, 233 (4th Cir. 1997)).

The Fourth Circuit has identified eight factors that bear on whether an abuse of discretion occurred:

> (1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decisionmaking process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.

Booth, 201 F.3d at 342-43. In this case, the most relevant factors are whether the decisionmaking process was reasoned and principled, the language of the plan, the adequacy of the materials considered and the degree to which they support the decision, and the administrator's admitted conflict

of interest. In applying these factors to Prudential's decision to deny disability benefits to Machovec, the court may only consider the evidence that was available to the administrator at the time of the decision. See Bernstein, 70 F.3d at 788-89.

The administrative record demonstrates that Prudential engaged in a reasoned and principled decisionmaking process. The claim was reviewed by three claims managers and two clinicians at three different stages, all of whom agreed to deny the claim. (R. at 2-11.) The notes from these reviews reflect a detailed examination of all of Machovec's submitted medical records. (Id.) In addition, Prudential repeatedly invited Machovec to submit any additional documentation or evidence in support of his claim. (Id. at 4, 8, 13-15, 68-69, 76-85, 87, 89.) Prudential's thorough investigation of Machovec's claim and the multiple layers of review created a reasoned and principled decisionmaking process. Cf. Stills v. GBMC Healthcare, Inc., 48 F. Supp. 2d 495, 498-99 (D. Md. 1999); Robinson v. Phoenix Home Life Mut. Ins. Co., 7 F. Supp. 2d 623, 631-32 (D. Md. 1998).

Prudential's decision also is supported by the language of the disability benefits plans. As Prudential explained its decision: "It is apparent that Mr. Machovec was reacting to stress at work, but the information on file does not support a significant functional impairment that would preclude him from performing his regular occupation." (R. at 76; see also id. at 68.) This explanation is consistent with a provision in the plan which places the burden on Machovec to submit sufficient evidence to "show" a disabling disorder and resulting restrictions and limitations preventing him from performing his regular occupation. (R. at 118, 134.) Accordingly, it was reasonable for Prudential to deny Machovec's claim based on his failure to submit sufficient documentation of a disabling condition limiting his ability to work.

The materials submitted by Machovec also support Prudential's decision. The written denials from Prudential and the notes from their clinical reviews point to a number of indications in the medical records that Machovec's problems were not totally disabling. Almost all of the evidence submitted consists of Machovec's subjective complaints. (R. at 10.) The only objective physical testing–blood work in September 2001, and an MRI and EEG in October 2001–was normal, and did not indicate any significant impairment. (Id. at 9-10, 27-28, 47-49, 68.) A claim of total impairment also is inconsistent with the fact that Machovec was treated principally by a primary care physician, and never saw a therapist or psychiatrist. (Id. at 5, 10, 68, 76.) Machovec continued to complain of work-related stress through August 1, at which point he had been out of work for nearly two months. (Id. at 5, 31, 68.) The work excuse slips issued by Dr. deBorja apparently were initiated at Machovec's request, with Dr. deBorja extending the out-of-work period only gradually over time. (Id. at 5, 68.)

Two different clinicians from Prudential reviewed Machovec's medical records in detail, and noted all of the above problems with his claim. Based on these indications and the lack of any objective evidence of disabling symptoms or impairment, these clinicians recommended that Prudential deny the claim. (Id. at 5, 9-10.) Although Prudential cannot arbitrarily ignore the opinions of Machovec's treating physician, it reasonably may choose to value the opinions of its own medical consultants over his treating physician. See Black & Decker Disability Plan v. Nord, 538 U.S. 822, 834 (2003) (holding that ERISA does not require plan administrators to give special deference to treating physicians' opinions, although administrators may not arbitrarily refuse to credit them); Sheppard & Enoch Pratt Hosp., Inc. v. Travelers Ins. Co., 32 F.3d 120, 126 (4th Cir. 1994). Prudential and its clinicians offered a number of specific reasons for not crediting the conclusory

references in Dr. deBorja's notes to anxiety, depression, and other disorders. Cf. Dunbar v. Orbital Scis. Corp. Group Disability Plan, 265 F. Supp. 2d 572, 582-83 (D. Md. 2003) (reversing denial of disability benefits, where the administrator failed to explain why it did not credit a treating physician's diagnosis and determination of disability); Stills, 48 F. Supp. 2d at 499 (upholding denial of disability benefits, noting the treating physician's failure to diagnose "beyond vague speculation" and inconsistencies in his recommendations). Furthermore, Prudential was entitled to credit the results of objective laboratory testing, indicating no sign of impairment, over Machovec's subjective complaints. Cf. Stills, 48 F. Supp. 2d at 497, 499 (upholding denial of benefits, where administrator's consultant determined that no objective information had been provided to support disability claim).

In sum, the evidence supports Prudential's discretionary decision that Machovec did not provide sufficient evidence of a disability under the plan. While Prudential has a conflict of interest, the other Booth factors noted above suggest that Prudential's decision was "consistent with an exercise of discretion by a fiduciary acting free of the interests that conflict with those of the beneficiaries." Smith, 369 F.3d at 418 (quoting Doe, 3 F.3d at 87).

The paucity of objective evidence in Machovec's medical records raises a final issue. If the record that was before the administrator does not contain sufficient evidence for the court adequately to review the administrator's decision, then the court "should remand the case to the administrator to receive additional evidence and to make a new determination." Bernstein, 70 F.3d at 789 (quoting Sheppard & Enoch Pratt Hosp., 32 F.3d at 125). Neither party suggests that a remand would be appropriate, or that any additional evidence would be available. Cf. id. at 790 (remanding denial of benefits, noting that additional evidence had been developed after the final denial); Dunbar, 265 F.

Supp. 2d at 585 (remanding because an administrator ignored "relevant and available evidence"). As noted above, Prudential's claim representatives repeatedly invited Machovec to submit any additional documentation or evidence in support of his claim. (R. at 4, 8, 13-15, 68-69, 73, 77-85, 87, 89.) Under these circumstances, a remand is neither necessary nor appropriate.

The record presents no genuine issue of material fact and the evidence before the court fails to demonstrate that Prudential abused its discretion in denying Machovec's claim for disability benefits. For the reasons stated above, the defendant's motion for summary judgment will be granted and the plaintiff's motion will be denied.

A separate order follows.

June 28, 2004
Date

/s/
Catherine C. Blake
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BERNARD MACHOVEC	:	
v.	:	Civil No. CCB-03-1920
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA	:	

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby Ordered that:

1. the defendant's motion for summary judgment (docket no. 16) is **GRANTED**;

2. the plaintiff's motion for summary judgment (docket no. 17) is **DENIED**;

3. copies of this Order and the accompanying Memorandum shall be sent to counsel of record; and

4. the clerk of the court shall **CLOSE** this case.

June 28, 2004
Date

/s/
Catherine C. Blake
United States District Judge